

Remarks

The Examiner's §103 rejections are based in part on Lang (US2002/0118112). However, as established below, applicant's invention date is prior to the effective date Lang. See MPEP 715.

As established by the attached Rule 1.131 Declaration of Dr. Andrew D. Hood ("Hood Declaration") and the corroborating Declaration of Mr. Jeffrey S. Sliwa ("Sliwa Declaration") and Mr. Daniel P. Maguire ("Maguire Declaration"), the invention claimed in the present application was not only conceived, but was reduced to practice prior to the effective date of the Lang reference.

Lang was filed in February 2002, and was based off a provisional application filed on February 23, 2001. As shown below, the inventors of the present application reduced their invention to practice before February 23, 2001, and hence prior to the Lang reference. See *generally* Hood, Sliwa, and Maguire Decl. Therefore, the Lang reference should not be considered prior art against the present invention, and all rejections based upon this reference should now be overcome. See 37 C.F.R. 1.131.

The present invention is a system for gathering and managing patient medical data comprising a handheld computing device with a first and second computer module, the first module gathering patient medical information and having a plurality of data entry screens, and the second module being loading in a microprocessor and having a means for creating customized data entry screens for use by the first module. See *generally*, application claims and specification.

In late 2000 through early 2001 Dr. Hood and Mr. Sliwa corresponded multiple times regarding the development of the invention. See Hood Decl. ¶ 2 and Sliwa Decl. ¶ 2 and relevant exhibits referenced therein. Their work is corroborated by multiple emails and

work logs regarding the invention. *See* Exhibits 3, 4 and 5 to Hood Declaration and Exhibits 1, 2, and 3 to Sliwa declaration.

On January 11, 2001 Dr. Hood met with Mr. Maguire to discuss patenting the invention. *See* Maguire Decl. ¶ 2 and Hood Decl. ¶ 3. The invention was complete as of this meeting and details fully commensurate with the scope of all claims in question were discussed. *See id.* On this same day Mr. Maguire sent to Dr. Hood and Mr. Sliwa a follow-up letter regarding the meeting. *See* Maguire Decl. ¶ 2 and Exhibit 1 to Maguire Declaration.

On or about January 14, 2001 Dr. Hood sent to Mr. Maguire a written disclosure of the claimed invention. *See* Hood Decl. ¶ 4 and Exhibit 1 to Hood Declaration. On or about January 23, 2001, Mr. Maguire received a disclosure document from Dr. Hood. *See* Maguire Decl. ¶ 3 and Exhibit 2 to Maguire declaration.

On or about January 26, 2001 Dr. Hood produced an early version of a marketing flyer to promote the claimed invention at a trade show. *See* Hood Decl. ¶ 5 and Exhibit 2 to Hood declaration.

Not presented here for purposes of conciseness, copies of early executable computer files of the invention detailing the invention and that are fully commensurate in scope of all claims are on file on the computer of Dr. Hood, located at 14500 Surrey Place, Pine Grove, California 95665. *See* Hood Decl. ¶ 6. These files were created prior to February 23, 2001. *See id.*


These activities, proven by the Hood Declaration, the Sliwa Declaration, and the Maguire Declaration, and the supporting exhibits, plainly establish reduction to practice before February 23, 2001 and prior to the effective date of Lang. With the Lang reference removed as prior art, the rejections based upon them cannot stand.

Thus, rejections for claims 2-25 and 27-40, relying on Lang, must now be reconsidered. The Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention to have include the features of Lang, however, as shown the Lang reference did not exist until after the time to the applicant's invention. All Section 103 rejections based partially on this reference in combination with a second reference must be reconsidered, since it is sufficient to antedate only one reference, and not both. *See* MPEP 715.02. ("Applicant may overcome a 35 U.S.C. 103 rejection based on a combination of references by showing completion of the invention by applicant prior to the effective date of any of the references.")

Conclusion

In light of the remarks and amendments detailed above, which address each rejection by the Examiner, Applicant respectfully requests reconsideration and allowance of the application.

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